

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:21-CV-00110-KDB-DSC**

**SUMMIT MANAGEMENT
SERVICES, INC, AND
RIVERWALK DENVER II, LLC,**

Plaintiffs,

v.

**FALLS LAKE FIRE &
CASUALTY COMPANY AND
COLONY INSURANCE
COMPANY,**

Defendants.

ORDER

THIS MATTER is before the Court on Defendants’ Motion for Judgment on the Pleadings (Doc. No. 40) and Magistrate Judge David Cayer’s Memorandum and Recommendation (“M&R”) (Doc. No. 44), which recommends that the motion be denied. No party has filed an objection to the M&R, and the time for doing so has expired. Fed. R. Civ. P. 72(b)(2).

I. BACKGROUND

There has been no objection to the Magistrate Judge’s statement of the factual and procedural background of this case. Therefore, the Court adopts the facts as set forth in the M&R. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985) (explaining the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge to which no objections have been raised).

II. STANDARD OF REVIEW

A district court may designate a magistrate judge to “submit to a judge of the court proposed findings of fact and recommendations for the disposition” of dispositive pretrial matters, including motions to dismiss. 28 U.S.C. § 636(b)(1). Any party may object to the magistrate judge's proposed findings and recommendations, and the court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). However, “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation” and need not give any explanation for adopting the M&R. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983). After reviewing the record, the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

III. DISCUSSION

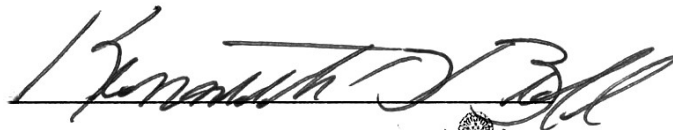
Having carefully reviewed the Magistrate Judge's M&R, the relevant portions of the record and applicable legal authority, this Court is satisfied that there is no clear error as to the M&R, to which no objection was made. *Diamond*, 416 F.3d at 315. Accordingly, this Court finds that it should adopt the findings and recommendations set forth in the M&R as its own solely for the purpose of deciding this Motion and that the pending motion should be **DENIED**.

ORDER

NOW THEREFORE IT IS ORDERED THAT:

1. Defendants Motion for Judgment on the Pleadings (Doc. No. 40) is **DENIED**;
and
2. This case shall proceed to a resolution on the merits of the pending claims in the
absence of a voluntary resolution of the dispute among the parties.

SO ORDERED ADJUDGED AND DECREED.



Kenneth D. Bell
United States District Judge



Signed: August 24, 2022